



Supplementary Planning Guidance Note

No.21 Environmental Impact Assessments

Adopted by Flintshire
County Council on 17th
January 2017



Purpose

It is Flintshire County Council's intention to prepare and keep up to date a series of Supplementary Planning Guidance (SPG) Notes which will provide detailed guidance on a range of development issues and topics. The purposes of these Notes are:

- To assist the public and their agents in preparing planning proposals and to guide them in discussions with officers prior to the submission of planning applications,
- To guide officers in handling, and officers and councillors in deciding, planning applications, and
- To assist Inspectors in the determination of appeals

The overall aim is to improve the quality of new development and facilitate a consistent and transparent approach to decision making.

Planning policies: the Flintshire context

The Development Plan

Under planning legislation, the planning policies for each area should be set out formally in the Development Plan. Flintshire County Council, as the Local Planning Authority (LPA), has a legal duty to prepare and keep up to date a development plan for the County, and the Flintshire Unitary Development Plan was adopted in 2011. The UDP provides broad policies together with allocations of land for all the main uses such as housing, employment and retailing, and will help to shape the future of Flintshire in a physical and environmental sense as well as influencing it in economic and social terms. The Plan therefore seeks:

- To help the Council make rational and consistent decisions on planning applications by providing a policy framework consistent with national policy and
- To guide development to appropriate locations over the period up to 2015.

The need for Supplementary Planning Guidance

Despite the Plan containing policies with which the Council can make consistent and transparent decisions on development proposals, it cannot in itself give all the detailed advice needed by officers and prospective applicants to guide proposals at the local level, such as house extensions or conversions of agricultural buildings. The Council's intention is to prepare a range of Supplementary Planning Guidance notes (SPG) to support the UDP by providing more detailed guidance on a range of topics and issues to help the interpretation and implementation of the policies and proposals in the UDP. The review of the Local Planning Guidance Notes will be undertaken on a phased basis and details of the available SPG's can be found on the Council's website. Where there is a need to refer to another SPG this will be clearly referenced. These SPG Notes are freely available from Planning Services, Directorate of Environment, County Hall, Mold, Flintshire CH7 6NF (telephone 01352 703228), at the Planning Services reception at County Hall and can be downloaded from the Planning Web pages www.flintshire.gov.uk/planning

The status of Supplementary Planning Guidance

Supplementary planning guidance can be taken into account as a material consideration in the decision making process. The National Assembly will give substantial weight to SPG which derives out of and is consistent with the development plan. In accordance with National Assembly advice the Council's suite of SPG's has been the subject of public consultation and Council resolution. The draft of this SPG was approved for public consultation on 13.06.13 (Council Minute no.6). The SPG was the subject of a public consultation exercise between 18.12.15 and 12.02.16. The 5 comments submitted to the Council have been taken into account and where appropriate amendments have been incorporated into this final draft which was approved by the Council on 17.01.17 (Council Minute no.8) for use as a material consideration in determining planning applications and appeals. A summary of the representations and the Council's response is set out in Appendix 4.

This document should therefore be afforded considerable weight as a material planning consideration.

No.21 Environmental Impact Assessments

1 - Background

1.1 - Environmental Impact Assessment (EIA) is a procedure which must be followed for certain types of project in order to provide decision makers with information about the effects a project might have on the environment. It has been a legal requirement since 1988, as a result of a EU Directive, for certain types of development to undergo an EIA before decisions are made as to whether consent should be given. For the majority of projects the relevant UK legislation is the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999. An EIA ensures that Information about the likely significant environmental effects of these developments is collected and assessed in a systematic way. An environmental statement (ES) is the document resulting from the EIA which accompanies the planning application, and the responsibility for producing it rests with the developer. The EIA should be taken into account by both the developer, as part of the project design, and by the local planning authority (LPA) in deciding whether planning permission should be granted. If the developer undertakes the task properly, this should facilitate the smooth running of the planning approval process. The process is summarised below and includes two key stages, screening and scoping, which are described more fully later. A screening opinion determines whether an EIA is needed, and is provided by the LPA. A scoping opinion identifies the range of information which the LPA considers must be contained within an ES.

2 - Main Steps of the EIA process:

» Project Initiation – Design with the Environment in mind
» Screening – Is EIA required?
» Scoping and pre-application discussions
» Environmental Studies
» Preparation of Environmental Statement (ES)
» Submission of planning application with ES
» Review of the ES by planning authority and consultees (possible request for further information)
» Evaluation of environmental information and other material considerations by planning authority
» Decision: refuse or grant (with or without conditions)
» Implementation and Monitoring

2.1 - Consideration of an EIA by all parties at an early stage can lead to adjustments which produce a better environmental outcome and assist the public in commenting on, and local planning authority in determining planning applications. This Supplementary Planning Guidance Note (SPG) seeks to provide an overview of the process but reference should be made to the Regulations and other guidance documents issued by the Welsh Government.

3 - Policy

3.1 - The requirement for EIAs began with a European Community Directive (97/11/EC), which stated “the assessment procedure is a fundamental instrument of environmental policy” and that “Community policy is based on the precautionary principle and on the principle that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.” The UK courts are obliged to ensure that community rights are fully and effectively enforced, and a local authority such as Flintshire County Council is under a direct duty to respect Community law, but a court will not intervene if decisions taken are reasonably open and all relevant material and guidance has been taken into account. In Wales, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 spell out the process, supplemented in Wales by guidance in Welsh Office Circular 11/99 ‘Environmental Impact Assessment’. The Welsh Government emphasises the importance of EIA in section 3.3.1 of Planning Policy Wales, ‘Environmental Impact Assessment (EIA) is the process by which information about the likely environmental effects of certain types of development is collected, assessed and taken into account, both by the developer, as part of project design, and by the local planning authority in deciding whether planning permission should be granted’.

3.2 - In Flintshire, the County Council’s Unitary Development Plan (UDP) contains one specific policy of relevance, Policy GEN5 Environmental Assessment: ‘Development proposals that are likely to have a significant impact on the environment and do not require formal assessment under other legislation must be accompanied by suitable supporting environmental impact information’. The policy seeks to ensure that where development does not fall within either schedule 1 or 2 but still has a potentially significant effect on the environment, suitable supporting information must be submitted with the proposals which will allow the Council to properly assess the environmental impacts of the development.

When EIA is needed what type of projects will require EIA

3.3 - The Regulations define two types of development:

- For Schedule 1 projects, EIA is mandatory and is normally clear as it includes projects such as chemical plants, waste treatment plants and power stations.
- For Schedule 2 projects, EIA may be required if the project is judged likely to give rise to significant environmental effects because of its nature, scale or location. A list of projects which may require EIA is set out in Appendix 2. Thresholds and criteria help to discount development which is not likely to have significant effects on the environment and these selection criteria are set out in Schedule 3 of the Regs and in Appendix 3. The exception is where the proposal is in, or partly in, a sensitive area, including the Clwydian Range Area of Natural Beauty, Sites of Special Scientific Interest, SPA’s, SAC’s, Ramsar Sites and scheduled ancient monuments, where the thresholds and criteria do not apply. Even so, there is no presumption that every Schedule 2 development in a sensitive area will require EIA. Where LPAs are uncertain about the significance of a project’s likely effect upon the environment, they should consult Natural Resources Wales (NRW). The Welsh Government, advised by NRW, has powers to call in for its own determination planning applications likely to affect significantly sites of more than local importance, and it has powers to direct that a development requires EIA even where it is below thresholds or not in a sensitive area. Some developments, which are far below the Schedule 2 thresholds, may require EIA if by cumulation with other existing developments they reach the threshold criteria or are likely to have significant effects.

Screening for EIA development determining whether a project will require EIA - Screening

3.4 - Every application must be screened for EIA, although few will actually require it. If the applicant did not request a pre-application screening opinion, the LPA must undertake one when the application is submitted. In Flintshire the decision on the need for EIA is made by the Head of Planning under his delegated powers. An applicant who has not raised the matter until lodging an application risks serious delay if it is then ruled that an ES is needed. There are three scenarios which will be addressed in turn:

- a) the developer thinks a project requires EIA
A developer can volunteer to undertake an EIA and submit an Environmental Statement alongside a planning application. However, it is advisable that the developer seeks a scoping opinion (see below) to determine what issues need to be addressed in the Environmental Statement, before commencing work on the EIA. If an Environmental Statement is submitted and found to be inadequate, the planning authority can under Reg 19, seek the submission of further details within a set time period, otherwise the application will be a deemed refusal based on the reason of inadequate information.
- b) the developer is not sure whether the project requires EIA
Prior to submitting a planning application a developer can ask the local planning authority (Reg 5) to produce a screening opinion to determine whether or not the project is covered by Schedule 2 Regs and whether EIA is required. The planning authority has 3 weeks (which can be extended by agreement with the developer) within which to adopt a screening opinion. The developer must provide a reasonable level of information about the project to enable the screening process to be undertaken.
- c) the developer does not think a project requires EIA
A developer can submit a planning application without an accompanying environmental statement and without making a request for a screening opinion. In such a case the local planning authority will screen the proposed project in order to determine whether or not the scheme falls within one of the categories in Schedule 2 of the Regs and whether EIA is required. The local planning authority has three weeks to reach a decision.

3.5 - It is important therefore that validating officers identify applications that might require an ES at an early stage, taking into account the relevant "selection criteria" in Schedule 3 to the Regulations. Should the applicant be dissatisfied with the LPA's opinion that EIA is required, they may refer the matter to the Welsh Government.

3.6 - As part of the screening opinion process, when the LPA decides an EIA is required, it must provide a clear and precisely reasoned written statement saying why. In all cases (including screening opinions to the effect that EIA is not required) the LPA must keep a record of the issues considered and its reasoning, not least in case there is a complaint or challenge later.

3.7 - Where the LPA initially gave a negative opinion and later becomes convinced that an EIA is required, it will then ask the Welsh Government to direct on the matter, for in such circumstances it cannot grant consent without undertaking EIA unless the Welsh Government directs that EIA is unnecessary. Case law has established that a negative determination by an LPA is not determinative, unlike one by the Welsh Government. In each case the competent authority has to make an informed

judgement on the basis of the information available to it, as to the question of what is a significant impact, weighing the relevant factors. A court will intervene only if the LPA has acted unreasonably. Any uncertainty about the need for EIA has to be resolved in favour of requiring EIA. Occasionally, possibly as a consequence of third party representations, the Welsh Government can issue a direction even when the developer has not requested one or it can over rule the LPA's opinion that EIA is not required.

When an applicant receives notification from the LPA that EIA is required for an application made without an ES, the applicant should write to the LPA within 3 weeks of the date of notification saying either that an ES will be submitted, or that the applicant is writing to the Welsh Government asking for a screening direction. If the applicant does not write to the LPA within the 3 week period, the application is deemed to be refused and there is no right of appeal.

Deciding what to include in an EIA - Scoping

3.8 - Following determination that a project requires EIA the developer will need to define the scope of the environmental statement. Developers are encouraged, but not required, to obtain a formal opinion from the LPA on what should be included in the ES. The Head of Planning has delegated powers to issue a scoping opinion identifying the range of issues and information which the LPA considers must be included in the ES. Before adopting one, the LPA must consult the developer and appropriate consultation bodies (such as Natural Resources Wales (NRW) and Cadw), but is not bound by their advice. It is advisable to engage in pre-application discussions about the scope of an ES, to improve the quality of the ES. Failure to include in an ES all the information required by a scoping opinion does not render it invalid but if information is statutorily required the application can only be rejected. The LPA may ask for further information if the ES is deficient, and time taken by the applicant in providing this information does not count as part of the 16 week period. A scoping opinion is not binding, so if it becomes obvious to the LPA during the process of considering an application that further information is required, it must be provided. The scoping opinion must be made by the local planning authority within 5 weeks of receiving the request or the applicant is entitled to ask the Welsh Government for a scoping direction. Officers should consider at an early stage whether an extension of time will be needed and agree this in writing with the applicant. Where the screening and scoping option is requested simultaneously, the LPA must adopt a scoping opinion within 5 weeks of the screening opinion being adopted, and a copy must be sent to the applicant. It must be kept for 2 years on the statutory register for public inspection.

3.9 - The Council will, if necessary, seek specialist advice when assessing the viability of facilities. The Council may feel the need to extend the period of marketing in times of flat or falling markets.

What to include in an environmental statement

3.10 - Schedule 4 to the Regulations requires that any Environmental Statement should include the following information:

- A description of the development covering site, design and size.
- A description of measures proposed to avoid, reduce or remedy significant adverse effects.
- The data needed to identify and assess the main effects which the development is likely to have on the environment.
- An outline of the main alternatives with reasons for their rejection.
- A non-technical summary of the above information.

3.11 - When preparing the ES the applicant should consult those bodies holding relevant information, which in turn are obliged to respond. A good ES should enable readers to understand for themselves how its conclusions have been reached, and to form their own judgements on the significance of the environmental issues raised by the project. The ES does not need to provide detailed information about every single environmental effect. Under the EIA Directive, assessment is required of those impacts which are likely and significant. The ES should provide comprehensive information, adequate methodology, well organised presentation, and be transparent, objective and impartial. There must be a proper assessment of emissions to air and water, not merely a statement of compliance. The ES must deal with all stages of the development from site preparation and construction, to operation and (where relevant) termination, restoration and after-care, so that an informed decision can be made about all the proposal's effects. The Welsh Government cannot become involved in questions concerning the adequacy of ESs because to do so could prejudice its position should there be an appeal or call in. But if it is brought to the Welsh Government's attention that an ES is substantially inadequate and the LPA appears not to be taking action to address the deficiencies, the Welsh Government will intervene because of the UK duty to comply with European Community law. The Institute of Environmental Assessment can help and will review the adequacy of one ES per authority per year, free of charge. It should be noted that the issues considered by the Institute will be those of methodology rather than the validity of the information and conclusions.

Submission of a planning application with an Environmental Statement

3.12 - In addition to the steps taken with any other planning application, the application and ES must be publicised by site notice and press advertisement stating that an ES has been submitted, where the documents can be inspected free of charge, where copies of the ES may be obtained, the cost of a copy, and giving the date (at least 21 days) by which any written representations should be made to the Council.

Submission of an Environmental Statement after the planning application

3.13 - Whilst the procedures are similar to the above, it is the applicant's responsibility to post site notices, notify the public and advise that representations may be made to the Council prior to submitting an ES.

Consideration of Environmental Statements and EIA planning applications

3.14 - The timeframe for dealing with the application is extended to 16 weeks from the date of receipt of the ES, although this can be extended with the applicant's agreement. The application is not invalid because an inadequate ES has been supplied but if the information supplied is inadequate the application must be refused. If an ES is not received, the Council can refuse to consider it until the ES is received.

Outline applications

3.15 - Whilst it is possible for an EIA application to be submitted in outline form, recent case law has established that EIA can be required as part of a reserved matters application on the basis that the grant of outline planning permission and the approval of reserved matters, constitutes a multi stage development consent. However, an EIA application must be properly assessed for possible environmental effects prior to the grant of outline planning permission. The LPA will therefore require that sufficient details are submitted concerning the proposal in order for the environmental and other effects to be properly assessed.

The decision

3.16 - When the LPA determines an EIA application, the report must refer to the ES and make clear that the information in the ES has been taken into account in coming to the recommendation.

3.17 - After making the decision, the LPA must:

- Inform the Welsh Government in writing of the decision
- Inform the public of the decision by publishing a notice in a local paper or by such other means as are reasonable in the circumstances, including use of the website.
- Make available for public inspection, where the planning register is kept, a statement of the content of the decision, the main reasons and considerations for the basis of the decision, and a description of the main mitigation measures to avoid, reduce or offset the adverse environmental impacts of the development.

Applications for amendment or deletion of a condition

3.18 - Such applications are fairly common, particularly in relation to minerals and waste permissions. Case law has established that they are for full permission, therefore they are applications for development consent, and therefore subject to EIA. If the developments they relate to are Schedule 2 developments, they must be screened. Such applications are often for an extension of time to commence or complete a development or to submit details required by a condition or to satisfy or discharge a condition. EIA will not be appropriate unless the extension of time may itself have significant environmental effects. It should be noted that the Planning and Compulsory Purchase Act 2004 removes the right to make applications for extension of time for commencement or submission of reserved matters in England. Such applications are still valid in Wales.

EIA and enforcement

3.19 - When deciding whether to initiate enforcement action, the LPA must decide whether the matters constituting the breach of planning control comprise or include Schedule 1 or 2 development and, if so, adopt a screening opinion before the enforcement notice is issued.

If EIA is required the LPA must serve a Regulation 25 Notice with the enforcement notice giving full reasons why, sending a copy to the Welsh Government and the consultation bodies.

EIA and permitted development

3.20 - Regulation 35 amends the General Permitted Development Order with respect to EIA:

- Schedule 1 development is not PD, and always requires the submission of a planning application and an ES.
- Schedule 2 development does not constitute PD unless the LPA has adopted a screening opinion to the effect that EIA is not required. Where the LPA's opinion is that EIA is required, PD rights are withdrawn and a planning application and ES must be submitted.
- The Circular (paragraphs 151 to 156) specifies certain minor classes to which the above requirements do not apply.

Appendix 1: Developments for which EIA is mandatory (Schedule 1 Development)

This list summarises (by heading only) the 20 classes of development which are in Schedule 1 of the EIA Regulations.

1. Crude oil refineries
2. Thermal and nuclear power stations
3. Installations for reprocessing nuclear fuel and carrying out other processes involving high-level radioactive material
4. Cast-iron and steel smelting works and other metal production
5. Asbestos extraction and processing
6. Manufacture on an industrial scale involving chemical conversion processes
7. Construction of major roads, railways and airport runways
8. Waterways and ports
9. Waste disposal installations for hazardous waste
10. Waste disposal for the incineration or chemical treatment of non-hazardous waste
11. Groundwater abstraction or recharge
12. Major water works
13. Large waste water treatment plants
14. Extraction of petroleum and natural gas
15. Large water storage
16. Pipelines for gas, oil or chemicals
17. Intensive rearing of poultry or pigs
18. Production of pulp, paper and board
19. Quarries and opencast mines
20. Storage of petroleum, petrochemical or chemical products

Some of these categories are subject to scale thresholds or criteria. For example, category 17 applies only to installations with more than (a) 85,000 places for broilers or 60,000 places for hens, (b) 3,000 places for production pigs (over 30 kg) or (c) 900 places for sows. Therefore the Regulations should be checked before deciding.

Appendix 2: Developments where EIA may be necessary (Schedule 2 Development)

Various sub-categories are listed under the following headings in Schedule 2, in each case with applicable thresholds and criteria

1. Agriculture and aquaculture
2. Extractive industry
3. Energy industry
4. Production and processing of metals
5. Mineral industry
6. Chemical industry (unless included in Schedule 1)
7. Food industry
8. Textile, leather, wood and paper industries
9. Rubber industry
10. Infrastructure projects
11. Other projects
12. Tourism and leisure
13. Changes to or extensions of developments listed in Schedule 1.

These categories cover most development. For example, category 10 includes housing developments although this is not stated in the Schedule.

Appendix 3: The selection criteria for screening Schedule 2 development

This list has been adapted from Schedule 3 of the Regulations.

(a)

- Characteristics of the development
- How big is it?
- How much would it increase adverse impacts from other existing developments?
- How sustainable is its use of natural resources?
- What wastes does it produce?
- What pollutants would be produced and what nuisances created?
- What would be the (worst case) risk of accidents and their consequences?

(b)

- Location of the development
- What is the level of environmental sensitivity of geographical areas likely to be affected by the development?
- What are the existing land uses?
- What are the natural resources in the area (relative abundance, quality and regenerative capacity)?
- What is the absorption capacity of the natural environment particularly habitats such as wetlands, coastal zones, mountains and forest, nature reserves and parks, protected habitats (SSSI, SAC and others), areas where the environmental quality standards laid down in community legislation have already been exceeded, densely populated areas and landscapes of historical, cultural or archaeological significance?

(c)

- Characteristics of the potential impact, particularly:
- The extent of the impact (geographical area, size of affected population.
- Any transfrontier nature of the impact (that is, between member states of the European Community).
- Magnitude and complexity of the impact, the probability of the impact and the duration, frequency and reversibility of the impact.

Appendix 4

Supplementary Planning Guidance Note (SPGN) Public Consultation, (Dec 18th 2015 and Feb 12th 2016) comments and responses to SPGN No 21 Environmental Impact Assessments.

Commenting Body / Individual	Comment	Response	Recommendation
No. 21 EIA's Environmental Impact Assessments			
Clwydian Range and Dee Valley AONB JAC	The committee welcomes the additional explanation in relation to 'sensitive areas' such as the Clwydian Range in relation to Schedule 2 projects.	Noted	No change
CPRW	The para no. '3.7' has been incorrectly positioned and the word 'an' should be inserted before 'EIA'.	Noted	Amend '3.7' to align with the para starting 'Where the LPA...'
CPRW	In para 3.11 should '... community law' be read '... European community law'.	Noted	Amend 'community law' to read 'European Community law' in para 3.11
CPRW	In para 3.15 the last sentence has been included as part of the subsequent para 3.16.	Noted	Amend para 3.15 by deleting '3.16' and merging into one paragraph and renumbering subsequent paras.
CPRW	In para 3.21 reference to 'the Circular' should be given in full.	The full title for the Circular is given in para 3.1 and it is not necessary for this to be repeated throughout the document.	No change